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THE PUBLIC HEALTH ACT, 1875.

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Regulations for the treatment and prevention of the spread of epidemic, endemic, or infectious diseases.

CASE for the OPINION of the LAW OFFICERS of the CROWN.

The Local Government Board desire the opinion of the Law Officers generally in regard to the scope of Sections 130 and 131 of the Public Health Act, 1875, and in particular as to the extent of the powers of the Board in making regulations under the former Section.

The Sections are in the following terms :—

“ The Local Government Board may from time to time make, alter, and revoke such regulations as to the said Board may seem fit, with a view to the treatment of persons affected with cholera or any other epidemic, endemic or infectious disease, and preventing the spread of cholera and such other diseases, as well on the seas, rivers, and waters of the United Kingdom, and on the high seas within three miles of the coasts thereof, as on land; and may declare by what authority or authorities such regulations shall be enforced and executed. Regulations so made shall be published in the ‘ London Gazette,’ and such publication shall be for all purposes conclusive evidence of such regulations.”

“ Any local authority may provide for the use of the inhabitants of their district hospitals or temporary places for the reception of the sick, and for that purpose may—

“ Themselves build such hospitals or places of reception; or

“ Contract for the use of any such hospital or part of a hospital or place of reception; or

“ Enter into any agreement with any person having the management of any hospital for the reception of the sick inhabitants of their district, on payment of such annual or other sum as may be agreed on.

“ Two or more local authorities may combine in providing a common hospital.”

It should be premised, as bearing on the questions which the Law Officers are requested to consider, that the Sections quoted above are included in a group of Sections in the Act of 1875, which deals with “ Infectious diseases and hospitals.” Section 131, which deals with hospitals, is regarded by the Board as authorising the provision of such medical attendance, food, nursing and medicine as the treatment in the hospital requires, and Section 133 authorises the Board to sanction the provision by a local authority of a temporary supply of medicine and medical assistance for the poorer inhabitants of their district. Under this Section the Board have authorised the provision of medical, including nursing, assistance by local authorities in connection with the domiciliary treatment of cases of Ophthalmia Neonatorum, the Board having made this disease compulsorily notifiable in England and Wales by regulations issued under Section 130 of the Public Health Act, 1875.

With reference to their powers to make regulations under Section 130 of the Act of 1875, the Board received in November, 1910, from the then Law Officers of the Crown an opinion with respect to certain particular questions which were raised in regard to this Section. A copy of this case and opinion is annexed.

The main point there discussed was as to the diseases that could be made the subject of regulations. As will be seen, the Law Officers advised that the Section gives power to issue regulations relating to pulmonary tuber-

Case and Opinion of
Law Officers of
8th Nov., 1910.

culosis and other epidemic, endemic or infectious diseases, whether recognised as such at the date of the Act or not; and that the question whether any given disease falls within the meaning of the language of the Section is one to be determined by reference to medical science.

1. The first point on which the Board desire advice is as to the meaning to be attributed to the term "endemic" as used in Section 130 of the Act of 1875.

Modern definitions of this term are set out on page 6 of the case laid before the Law Officers, to which reference has been made. The point in doubt is whether the meaning of the word is to be regarded as limited by the use of the other expressions in connection with which it appears in the Section, or whether it is to be regarded as not so limited in meaning, but as indicating any disease which is commonly prevalent, though not possessing either of these characteristics. In the latter case "endemic" would appear to comprehend any disease that prevails in any part of the country, with the result that regulations under the Section might provide for such classes of disorder as cancer and rickets, appendicitis, bronchitis, epilepsy and heart disease, and other ailments which are not commonly regarded as being either epidemic or infectious, and the other terms used in the Section would seem to be somewhat superfluous.

2. The Board are advised by their Medical Officer that a large amount of sickness which is due to diseases of an epidemic, endemic or infectious character could be eliminated, and the public health of the country greatly improved, if the following services were readily available for the community:—

- (a) Efficient home nursing;
- (b) Laboratories for the examination of pathological material;
- (c) Maternity hospitals and skilled advice during the ante-natal and post-natal periods.

As regards (a) the Board desire to know whether, by regulations made under Section 130 of the Act of 1875, they are empowered to authorise or to require local authorities to provide medical attendance, medicine and nurses for person at their own homes when suffering from diseases to which the regulations apply; and further (if they can proceed so far) whether the regulations can also provide for the provision of food for the patients, when this is required on medical grounds.

In regard to this subject reference may be made to the provisions of Section 133 of the Act of 1875.

Attention may also be drawn to Section 134 of this Statute, which appears to authorise domiciliary treatment in the circumstances mentioned in that Section. There would not appear to be anything in the provisions of Section 130 to limit the Board's powers as regards the regulations they may think fit to make under that Section, and the Board have under that Section made regulations imposing duties as regards the notification of various diseases, although no specific mention is made of the subject of notification in the Public Health Act. The Board are advised by their Medical Officer that when cases of endemic or infectious disease are notified it is sometimes highly important that a medical practitioner should visit and advise the patient promptly, and, if necessary, treat the patient or arrange for his being medically treated in his own home.

(b) With regard to pathological laboratories, the Board are advised by their Medical Officer that the treatment and prevention of many classes of disease is likely to be more efficient if the doctor in attendance on the case is able to submit pathological material for examination and report by an expert at a laboratory, with a view to ascertain the precise nature of the disease from which the patient is suffering, or in order to secure greater exactitude in the treatment of the patient.

At present this assistance is not available for the population generally. There are, however, private establishments where bacteriological examinations are made, and these are available for anyone who chooses to pay for the work done.

(c) With regard to maternity hospitals, the Board are advised by their Medical Officer that there is a consensus of medical opinion that the provision of lying-in hospitals for the reception of women whose home conditions



are unsatisfactory would have an important effect in preventing puerperal fever and other diseases. At present certain lying-in hospitals for poor women exist in large towns, and provision of this character is made, for necessitous women under the Poor Law Acts. But the Board have been advised that Section 131 of the Act of 1875, which empowers a local authority to provide hospitals for the sick, would not authorise the provision of lying-in hospitals for normal cases of confinement, since 'child-bearing is an ordinary incident in a woman's life. On the other hand, the Board's Medical Officer advises that parturient women are not infrequently in need of skilled medical or midwifery and nursing assistance, and can, in view of their suffering, be described as "sick." He further advises the Board that confinements which apparently are "normal" may, in the absence of such skilled medical or midwifery care and nursing as can best be given at a hospital, be suddenly fatal through unexpected complications.

In connection with this subject it would be desirable to establish Infant Consultation Centres—that is to say, centres to which mothers can come for medical advice as to themselves and as to the upbringing of infants, with a view to preventing infants from contracting diseases, or to preventing the later results of such diseases, and from which centres "health visitors" would go to the homes of mothers for similar purposes. With regard to such centres attention may be drawn to the provision of the Notification of Births Act, 1907. Before the Board give their assent to the adoption of that Act by a local authority, their practice has been to enquire what action the local authority propose to take on the receipt of notification of births. The usual procedure is for the local authority to appoint a woman health visitor to visit the homes of the infants to give advice bearing on their health. If an Infant Consultation Centre were also provided, a medical officer would attend to emphasise and extend the advice of the health visitor, when additional advice is necessary. The Board consider that the establishment of Infant Consultation Centres is necessary for the success of the work carried out by the health visitors.

Before leaving this part of the case the Board would draw attention to opinions obtained from the then Law Officers in 1887 by the Privy Council, and in 1889 by the Board, as to the bearing of Section 130 of the Act of 1875 on certain Orders issued by the Board in relation to cholera in 1883 and 1884. A copy of the Case and Opinion of 1889 (which contains a reference to the opinion given in 1887) is appended. The Board had there proposed to make regulations under the Section in regard to cholera, which imposed duties upon Customs Officers relating to the detention of ships and the giving of notices. The Law Officers of that time took the view that the regulations proposed were *ultra vires*. But it is to be noted that the opinion was given before the repeal of the Quarantine Acts.

3. Further, the Board desire to be advised whether venereal diseases, such as syphilis and gonorrhœa, can be made the subject of regulations under Section 130 of the Act of 1875.

Accompanying the present case is a copy of a case submitted to the Law Officers of the Crown in 1887, with their opinion thereon, as to the power under Section 22 of the Poor Law Amendment Act, 1867, to detain in workhouses paupers suffering from syphilis. In that case it was stated that syphilis does not appear to be an infectious disease within the meaning generally given to the word "infectious," but it is in a sense contagious. The knowledge of the nature of syphilis and of its means of spreading has since that date become much more exact, and the Board are now advised by their Medical Officer that syphilis and other venereal diseases, such as gonorrhœa, are infectious, and may properly be classed as endemic, and that there is a general consensus of medical opinion to that effect. There was no question in the case as to whether these diseases were endemic.

The Board will be obliged if the Law Officers will advise them upon the questions raised, which may be summarised as follows:—

- (1) Is the meaning of the expression "endemic," as used in Section 130 of the Public Health Act, 1875, in any sense limited by the terms of that Section, and, if so, to what extent; or should it be taken to mean any form of disease which is commonly prevalent, even though not infectious or epidemic?

Case and Opinion of
Law Officers of
16th Jan., 1889.

Case and Opinion of
10th May, 1887.

- (2) What is the general scope of the Board's powers under Section 130 of the Public Health Act, 1875, and what limitations (if any) are to be placed on these powers in the making of regulations imposing duties on local authorities and private persons?
- (3) Whether the Board, for the purpose of the treatment and prevention of diseases to which the Section applies, have authority by regulations under the Section (a) to confer the power or (b) to impose the duty upon local authorities, at the cost of the rates, to—
 - (a) Provide medical and nursing assistance, including medicine and such food as is necessary for treatment, for all classes of patients suffering from such diseases in their own homes;
 - (b) Provide for the free examination of pathological material in laboratories established by them or by arrangement with existing laboratories;
 - (c) Provide lying-in hospitals for pregnant women and professional attendance and advice for such women during the ante-natal and post-natal periods (*see also 5*);
 - (d) Provide Infant Consultation Centres, together with any necessary equipment and staff of medical practitioners.
- (4) Whether the Board have power by such regulations as above mentioned to require the notification of venereal disease and make provision for the treatment of persons suffering from such diseases at the cost of the local authority?
- (5) Whether Section 131 of the Public Health Act, 1875, which relates to the provision of hospitals for the reception of the sick, enables a local authority to provide lying-in hospitals for pregnant women.

Accompanying this case, in addition to the other documents referred to above, are copies of Orders which the Board have made under the powers of Section 130 of the Public Health Act, 1875.

OPINION OF THE LAW OFFICERS OF THE CROWN.

1. Yes. We think the word "endemic" is used in contrast to epidemic, and signifies a disease which, by reason of its permanence in a locality, is regarded as distinguished from the same disease which in other places occurs occasionally or periodically. For example, cholera would be regarded as endemic in parts of India, but epidemic should it recur in this country.

2. We cannot answer this question except in relation to particular facts, and these are dealt with in answer to Question 3.

3. If a disease be within the provisions of Section 130, we think the Board have power to make the rules that would impose upon the Local Authorities at the cost of the rates the duties mentioned in (a) and (b). The care of pregnant women as such and the provision of advice for infantile health (apart from diseases within the Section) do not come within the Section at all.

4. If such a disease were within the Section, regulations such as these suggested would appear to be lawful.

5. We do not think that pregnant women incapacitated by reason of their pregnancy are "sick inhabitants" within the meaning of Section 131.

(Signed) JOHN SIMON.

(Signed) STANLEY O. BUCKMASTER.

Law Officers' Department,
2nd July, 1914.